

Agency 98

Kansas Water Office

Articles

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Article 1.—DEFINITIONS

98-1-1. Definitions. The following definitions shall apply to all regulations of the Kansas water office:

(a) “Assignment” means either of the following:
(1) The transfer of any right under a water purchase contract to a third person; or

(2) the transfer to a third person of any of the duties and obligations owed by a water contract holder to the state.

(b) “Authority” means Kansas water authority.

(c) “Conservation storage water supply capacity” means the space in a reservoir that meets the following requirements:

(1) Has been purchased, contracted for purchase, or otherwise acquired by the state; and

(2) has been designated for the storage of water for any beneficial purpose or for sediment accumulation purposes in proportion to the amount of storage purchased, contracted for purchase, or otherwise acquired by the state.

(d) “Cooperating landowner” means a person requesting that the office issue an easement along a navigable river for purposes authorized in K.S.A. 2012 Supp. 82a-220, and amendments thereto.

(e) “Days” has the meaning specified in K.S.A. 60-206(a), and amendments thereto.

(f) “Designated representative” means any person designated to perform on another’s behalf.

(g) “Director” means director of the Kansas water office or the director’s designee.

(h) “Discharge” means the volume of water per unit of time passing a specific cross section of a river.

(i) “Drought having a two percent chance of occurrence in any one year” means a drought hav-

ing a statistical chance of occurring once every 50 years, on the average, using all available statistics and information.

(j) “Industrial use” means any use of water primarily for the production of goods, food, or fiber or for providing utility services. This term shall include any incidental uses.

(k) “Irrigation use” means the use of water for growing agricultural crops, watering gardens, orchards, and lawns exceeding two acres in area and for watering golf courses, parks, cemeteries, athletic fields, racetrack grounds, and similar facilities.

(l) “Municipal use” means the use of water that meets the following conditions:

(1) Is obtained from a common water supply source by a municipality, rural water district, other water supply district, or group of householders;

(2) is delivered through a common distribution system; and

(3) is for domestic, commercial, trade, industrial, and any other related incidental uses for any beneficial purposes.

(m) “Natural flow” means that portion of the flow in a natural stream that consists of precipitation on the stream and reservoir water surface, direct runoff from precipitation on the land surface, groundwater infiltration to the stream, and return flows to the natural stream from municipal uses, agricultural uses, or other uses, unless otherwise defined in an operations agreement.

(n) “Office” means Kansas water office.

(o) “Operations agreement” means a document agreed to by the director and either a water assurance district or water supply access district, de-

scribing the terms by which the coordinated system of reservoir operations is to be managed.

(p) “Participant” means a person seeking an easement on state property along a navigable river in the state for a conservation project, as defined in K.S.A. 2012 Supp. 82a-220 and amendments thereto.

(q) “Person” means any natural person, private corporation, government unit, municipality, or public corporation.

(r) “Program agency” means any state, federal, or local agency that provides oversight, services, funding, or other support for a project or group of projects for which a landowner seeks an easement on state property along a navigable river, pursuant to K.S.A. 2012 Supp. 82a-220 and amendments thereto.

(s) “Recreational use” means the use of water for activities including fishing, swimming, boating, and hunting or for entertainment, enjoyment, relaxation, and fish and wildlife benefits.

(t) “Reservoir” means a lake or other impoundment in which water is stored.

(u) “Reservoir yield” means the quantity of water that can be withdrawn from the conservation storage water supply capacity of a reservoir during a drought having a two percent chance of occurrence in any one year, as determined through the procedure specified in K.A.R. 98-5-9.

(v) “Target flow” means the discharge at specific points along a river designated within an operations agreement.

(w) “Water supply access contract” and “water assurance contract” mean a contract to provide for the development of a coordinated system of reservoir operations designed to supplement natural flows, in order to meet demands of eligible water right holders during low-flow periods, by release of water supply from state-owned or state-controlled conservation storage water supply capacity of the major reservoirs in the designated basin.

(x) “Water assurance district” means an organization of eligible water right holders established under K.S.A. 82a-1330 et seq., and amendments thereto.

(y) “Water purchase contract” means a contract for the sale of water from the conservation storage water supply capacity of a reservoir made pursuant to the state water plan storage act, K.S.A. 82a-1301 et seq. and amendments thereto.

(z) “Water reservation right” means the state’s right to divert and store waters of all streams flowing into the conservation storage water supply ca-

capacity of a reservoir. The water reservation right shall be sufficient to ensure the yield of water throughout a drought having a two percent chance of occurrence in any one year.

(aa) “Water supply access district” means an organization of eligible water right holders established under K.S.A. 2012 Supp. 82a-2309, and amendments thereto.

(bb) “Year” means a 12-month period beginning with a specified month and day.

(cc) “Yield” means the quantity of water that can be withdrawn from storage in a reservoir for a given period of time. (Authorized by and implementing K.S.A. 2012 Supp. 82a-220, K.S.A. 82a-923, K.S.A. 82a-1319, K.S.A. 82a-1345, K.S.A. 82a-1403, K.S.A. 2012 Supp. 82a-2324; effective Jan. 1, 1966; amended Aug. 30, 2013.)

98-1-2. (Authorized by K.S.A. 82a-923; effective Jan. 1, 1966; revoked Aug. 30, 2013.)

Article 2.—PUBLIC HEARINGS ON THE STATE WATER PLAN

98-2-1. Notice. (a) Notice of public hearings on the state water plan or any section of the plan shall be given by the authority to those agencies and persons, both public and private, specified in K.S.A. 82a-905, and amendments thereto. The authority shall give notice of these hearings to any other individuals and organizations that the authority deems to have an interest in the subject of that portion of the state water plan.

(b) Notice of any hearing shall be published in the Kansas register at least twice. The first publication shall be no earlier than two months before the first public hearing. In addition to the official notice of public hearings, the authority may issue press releases and post information on the office webpage. (Authorized by K.S.A. 82a-923; implementing 82a-905; effective Jan. 1, 1966; amended Aug. 30, 2013.)

98-2-2. Conduct of hearing. (a) The chairperson of the authority or a member of the authority designated by the chairperson shall preside at each public hearing on the state water plan.

(b) The authority shall request those persons desiring to appear at any public hearing on the state water plan to notify the authority at least five days before the date of the hearing. Those persons who have notified the authority in advance of the hearing of their desire to be heard shall be scheduled to be heard first at any hearing. Any person

who has not notified the authority may be heard if the time schedule for the hearing permits. Each person who desires to have a statement made a part of the public record of any hearing on the state water plan shall submit two copies of the statement to the authority. An oral summary of the statement may be presented at the hearing.

(c) The chairperson, members of the authority, and members of the staff of the office may question any person who presents a statement.

(d) The person presiding at any hearing on the state water plan may set time limits on oral presentations and may establish other procedures as appropriate. Hearing procedures shall be announced at the beginning of each hearing.

(e) Any person who is unable to appear at a scheduled hearing may submit a written statement to the office. Statements submitted when the hearing record is open shall be made a part of the public record of the hearing. The hearing record shall remain open for at least 10 days following the hearing. (Authorized by K.S.A. 82a-923; implementing K.S.A. 82a-905; effective Jan. 1, 1966; amended Aug. 30, 2013.)

98-2-3 through 98-2-20. (Authorized by K.S.A. 82a-923; effective Jan. 1, 1966; revoked Aug. 30, 2013.)

Article 4.—WEATHER MODIFICATION

98-4-1. Licenses. (a) No person may engage in any weather modification activity within the state of Kansas without a valid license issued under this regulation and a permit issued under K.A.R. 98-4-2. “Weather modification activity” shall mean any activity, operation, or experimental process that has as its objective inducing change, by artificial means, in the composition, behavior, or dynamics of the atmosphere.

(b) In order to obtain a license under the Kansas weather modification act, the applicant shall demonstrate that the applicant is qualified to conduct a weather modification project of the kind the applicant wishes to conduct in Kansas by the applicant’s knowledge of meteorology and cloud physics and that individual’s field experience in weather modification. The applicant shall meet the following requirements, in addition to meeting the requirements in subsection (c):

(1) Submit an application for a license to the authority on forms provided by the director. Forms may be requested from the office and may be posted on the office web site. Forms shall be

submitted at least 60 days before the start of the proposed operational period and the next authority meeting for consideration; and

(2) pay the \$100.00 license fee, unless that fee is waived by the authority because of the educational or experimental nature of the work proposed. The candidate for exemption shall file a request with the director indicating that the educational or experimental nature of the work merits exemption from fees.

(c) The license applicant shall meet one of the following professional or educational requirements:

(1) Have eight years of professional experience in weather modification or field research activities and at least three years of experience as a project director;

(2) hold a baccalaureate degree in an applicable discipline, as determined by the director, and have three seasons of experience in the application of those studies to weather modification activities; or

(3) hold a baccalaureate degree that includes 25 hours of meteorological studies and have two seasons of practical experience in weather modification research or activities.

(d) Each license shall expire at the end of the calendar year for which it is issued.

(e) Weather modification licenses may be renewed annually, effective January 1 each year. Renewal shall be granted if both of the following conditions are met:

(1) Receipt by the director of a request for renewal from the license holder no later than November 30; and

(2) receipt by the director of the \$100 annual license fee, unless this fee is waived pursuant to paragraph (b)(2). (Authorized by K.S.A. 82a-1403; implementing K.S.A. 2012 Supp. 82a-1405, K.S.A. 82a-1406, and K.S.A. 82a-1407; effective, E-74-39, July 26, 1974; effective May 1, 1976; amended Aug. 30, 2013.)

98-4-2. Permits. (a) A weather modification permit, which is a document issued by the director authorizing weather modification activity in Kansas, shall be required annually, on a calendar-year basis, for each weather modification project. If a weather modification project will extend over more than one calendar year, a permit may be extended on a year-to-year basis upon payment of the annual fee, a review by the director, and the publication of a notice of intent to continue

the operation. A public hearing on any renewal may be held by the director.

A permit shall not be assigned or transferred by the permit holder.

(b) Each permit application shall be submitted at least 60 days before the initial date of the proposed operational period for which the permit is sought. Each permit applicant shall also provide the application at least 30 days before an applicable authority meeting to ensure timely consideration.

(c) Each applicant for a permit to conduct weather modification activities in Kansas shall meet the following requirements:

(1) Submit to the director a completed application for permit on a form provided by the director. Forms may be posted on the office web site;

(2) pay the \$100.00 permit fee, if applicable;

(3) present evidence that the applicant is, or has in its employ, a license holder;

(4) demonstrate proof of ability to meet the liability requirements of section 1411 (4) of the Kansas weather modification act. This proof may be provided in the form of an insurance policy written by a company authorized to do business in Kansas or by a statement of individual worth, including a profit-and-loss statement, that is accepted by the director;

(5) submit a complete and satisfactory operational plan for the proposed weather modification project that includes the following:

(A) A map of the proposed operating area specifying the primary target area and showing the area reasonably expected to be affected. "Primary target area" shall mean the area within which the weather modification activity is intended to have an effect;

(B) the name and address of the license holder specified in paragraph (c)(3);

(C) the nature and object of the intended weather modification activities;

(D) the meteorological criteria to be used to initiate or suspend modification activities;

(E) the person or organization on whose behalf the project is to be conducted;

(F) a statement showing any expected effect upon the environment; and

(G) the methods that will be used in determining and evaluating the proposed weather modification project;

(6) at least seven days before any required public hearing, publish a "notice of intent" to engage

in weather modification activities in each county of which all or part could be within the primary target area or within the areas reasonably expected to be affected. The time and place of the public hearing shall be approved by the director. The notice of intent shall include notice published in a newspaper or newspapers of general circulation in the area. The notice shall meet the following requirements:

(A) Describe the primary target area;

(B) describe the area that might reasonably be affected;

(C) specify the period of operation, including starting and ending dates. Operational periods shall not be required to be continuous;

(D) describe the general method of operation;

(E) describe the intended effect of the operation;

(F) state the time and place of a public hearing on the application. The hearing shall be held in or near the primary target area; and

(G) state that complete details of the application for a permit will be available for examination in the office of the authority in Topeka and at a location within the project area as described in the public hearing notice;

(7) provide satisfactory evidence of publication of the notice of intent to the director before the public hearing; and

(8) provide any other relevant information as may be required by the director.

(d) At the discretion of the director, additional information may be required of the applicant. This additional information may include a comprehensive environmental impact analysis similar to the statements required for federal projects.

(e) Each permit issued for a weather modification activity shall be subject to revision, suspension, or modification of its terms and conditions by the director, if necessary to protect the health, safety, or property of any person or to protect the environment.

(f) In order to modify the boundaries of a project for which a permit has previously been obtained, a revised permit shall be required, with conditions similar to those under which the original permit was issued or as modified by the director. (Authorized by K.S.A. 82a-1403; implementing K.S.A. 82a-1406, K.S.A. 82a-1411, K.S.A. 82a-1415; effective, E-74-39, July 26, 1974; effective May 1, 1976; amended Aug. 30, 2013.)

98-4-3. Evaluation of permit applica-

tion. (a) Each permit application shall be evaluated based on the following considerations:

(1) The project can reasonably be expected to benefit the residents of the primary target area or an important segment of the state's population.

(2) The testimony and information presented at the public hearing are generally favorable to the proposed activity.

(3) Economic, social, or research benefits are expected.

(4) The applicant has provided adequate safeguards against potentially hazardous effects to health, property, or the environment and has outlined a program for the implementation of these safeguards.

(5) The proposed project will not have any detrimental effect on previously authorized weather modification projects.

(6) The proposed project is scientifically and technically feasible.

(7) If the application is for a scientific research and development project, it offers promise of expanding the knowledge and technology of weather modification.

(b) Each permitted project shall be under the personal direction, on a day-to-day basis, of an individual who holds a valid license issued under the Kansas weather modification act.

(c) The permit holder shall not conduct activities outside the limits stated in the operational plan specified in K.A.R. 98-4-2. All activities planned for periods of severe weather shall be listed in the permit application and identified at the public hearing. (Authorized by K.S.A. 82a-1403; implementing K.S.A. 82a-1406, K.S.A. 82a-1411, and K.S.A. 82a-1412; effective, E-74-39, July 26, 1974; effective May 1, 1976; amended Aug. 30, 2013.)

98-4-4. Reports. (a) Each permit holder shall maintain at that individual's project office a current log of all operations, which shall mean a log that has up-to-date information from the past 24 hours. This log shall be available for inspection by any person authorized by the director. The log shall include information at least equivalent to information required on the log forms available from the office.

(b) Each permit holder shall submit a monthly report of weather modification activities under the permit for each calendar month for which the permit is valid. Each monthly report shall be submitted no later than the close of business on the 15th

day of the following month. One copy of all entries made in the weather modification logs shall be included when making the monthly reports, unless more detailed information is required when the permit is granted by the director.

(c) Each permit holder shall submit a preliminary annual report within 30 days after the end of each calendar year or within 30 days after the end of the project, whichever comes first. The permit holder shall also submit a final annual report on the project within 90 days after the end of the project. These reports shall include the following:

(1) Monthly and project period totals for information required in the logs; and

(2) the permit holder's interpretation of project effects as compared to those anticipated in the original application for the permit. (Authorized by K.S.A. 82a-1403; implementing K.S.A. 82a-1417; effective, E-74-39, July 26, 1974; effective May 1, 1976; amended Aug. 30, 2013.)

98-4-5. Procedure for granting emergency permits.

(a) A permit may be granted on an emergency basis if evidence is presented to the director that clearly identifies the situation as an emergency. "Emergency" shall mean an unusual condition that could not have reasonably been expected or foreseen and in which it can be anticipated that damage can be avoided or reduced by prompt weather modification action.

(b) Upon the applicant's presentation of evidence satisfactory to the director that an emergency exists or could reasonably be expected to exist in the very near future that could be alleviated or overcome by weather modification activities, an emergency permit may be issued by the director to an individual holding a license issued under K.S.A. 82a-1401 et seq., and amendments thereto. Coincident with the issuance of the permit, the information contained in the permit shall be released by the director to the news media in the area intended to be affected.

(c) If the permit holder desires to continue the permit activities and the director grants an emergency permit, a date for the public hearing shall be set by the director within 10 days after the permit is granted. The permit holder shall be responsible for providing public notice of the hearing through the local news media in the area. At the public hearing, the permit holder shall describe the following:

(1) The objectives of the emergency action;

(2) the success to date; and

(3) any future plans under the permit.

On the basis of the information presented at the public hearing, the decision of whether to revoke the emergency permit, modify it, or allow continued operation under conditions specified by the director shall be made by the director. (Authorized by K.S.A. 82a-1403; implementing K.S.A. 82a-1414; effective, E-74-39, July 26, 1974; effective May 1, 1976; amended Aug. 30, 2013.)

98-4-6. (Authorized by K.S.A. 1975 Supp. 82a-1403; effective, E-74-39, July 26, 1974; effective May 1, 1976; revoked Aug. 30, 2013.)

98-4-7. (Authorized by K.S.A. 1975 Supp. 82a-1403; effective May 1, 1976; revoked Aug. 30, 2013.)

98-4-8. Field operations. As provided in K.A.R. 98-4-3 (b), the license holder or a substitute license holder approved by the director shall be on duty at the license holder's project site at all times while weather modification activities are being carried out. (Authorized by K.S.A. 82a-1403; implementing K.S.A. 82a-1412; effective May 1, 1976; amended Aug. 30, 2013.)

98-4-9. (Authorized by K.S.A. 1975 Supp. 82a-1403; effective May 1, 1976; revoked Aug. 30, 2013.)

98-4-10. (Authorized by K.S.A. 1975 Supp. 82a-1403; effective May 1, 1976; revoked Aug. 30, 2013.)

Article 5.—STATE WATER PLAN STORAGE

98-5-1. (Authorized by K.S.A. 82a-1319; implementing K.S.A. 82a-1305; effective May 1, 1979; amended May 1, 1980; amended May 1, 1984; amended Nov. 22, 1996; revoked Aug. 30, 2013.)

98-5-2. Applications. (a) Each application to enter into a water purchase contract shall be submitted in writing on forms prescribed by the director and shall be signed by the person making the application or the person's chief officer or designated representative. The application shall be filed with the director.

(b) Each application shall include the following information:

- (1) The name and address of the applicant;
- (2) the reservoir from which the applicant proposes to withdraw water;

(3) the peak daily rate at which the applicant proposes to withdraw water and the total annual quantity to be withdrawn;

(4) the uses proposed to be made of waters withdrawn; and

(5) the estimated date of first withdrawal of water.

(c) Each application shall be reviewed by the director or designee for compliance with statutory and regulatory requirements and for completeness.

(d) Each application that is complete and meets statutory and regulatory requirements shall be assigned an application number. Application numbers shall be assigned in chronological order according to the date and time of receipt of each application. The applicant shall be notified of the receipt of and the application number assigned to the application. Notice may be provided through any means, including electronic mail or first-class mail, to the applicant.

(e) Each application that is not complete or does not meet statutory or regulatory requirements shall be returned to the applicant for further information or resubmission in order to meet the statutory and regulatory requirements. No application number shall be assigned to incomplete or nonconforming applications.

(f) When an application to enter into a water purchase contract is accepted by the director, notice of the acceptance shall be provided to other applicants for withdrawal of water from the same reservoir and each water assurance district or water supply access district with a water assurance contract relating to the same reservoir at the last known address of each applicant or water assurance district. The notice shall specify the name of the applicant whose application has just been accepted and the annual quantity of water included in the application. Notice shall be provided by first-class mail, postage prepaid, to the last address on file for the applicant.

(g) If a water purchase contract has not been executed before 10 years from the date of the receipt of the application and if the applicant has not requested an extension of time for the application, the application shall be cancelled, according to subsection (h).

(h) Before cancellation of an application, the applicant shall be notified by the director in writing that the application shall be cancelled 30 days after date of the notice unless the applicant submits to the director a written request for an extension of time for the application. The notice

shall be sent by first-class mail, postage prepaid, to the applicant's last known address. Notice may also be provided by electronic mail. The application shall be cancelled if a written request to extend the application is not received within 30 days from date of the notice.

(i) Ten years from the date of the receipt of the application, the applicant may request, in writing, that the application be extended for no more than three years. The extension shall be granted, unless the application is found to be incomplete or not in compliance with statutory or regulatory requirements.

(j) Any part of the application, except the reservoir from which the applicant proposes to withdraw water, may be amended at any time. Each applicant wanting to change the reservoir from which the applicant proposes to withdraw water shall file a new application. The new application shall be assigned a date and application number as provided in subsection (e). (Authorized by K.S.A. 82a-1319; implementing K.S.A. 82a-1310a, K.S.A. 82a-1311a; effective May 1, 1979; amended May 1, 1980; amended May 1, 1981; amended May 1, 1984; amended May 1, 1987; amended April 26, 1993; amended Aug. 30, 2013.)

98-5-3. Request to negotiate. (a) When an applicant is ready to enter into a water purchase contract, the applicant shall provide written notice of the applicant's desire to enter into negotiations for a contract with the director.

(b) Any applicant may be required by the director to provide information in addition to that included in the application required in K.A.R. 98-5-2(b). This information shall be for the purpose of determining the following:

(1) What is the annual quantity of water needed;

(2) whether the proposed sale of water supply is in the public interest; and

(3) whether the benefits to the state from approval of the contract are greater than the disadvantages to the state from rejection of the contract.

(c) When the director believes that there is sufficient information available to determine whether the proposed sale is in the interest of the people of Kansas and will advance the purposes specified in K.S.A. 82a-901 et seq. and amendments thereto, the authority shall be notified by the director indicating that a request to enter into

negotiations for a written contract has been received.

(d) The authority shall be provided by the director with the information collected or developed to show that the proposed sale is in the interest of the people of Kansas and will advance the purposes specified in K.S.A. 82a-901 et seq., and amendments thereto.

(e) The authority shall consider the request to begin negotiations for a written contract and make a finding of one of the following:

(1) The proposed sale is in the public interest and will advance the purposes specified in K.S.A. 82a-901 et seq., and amendments thereto.

(2) The proposed sale is not in the public interest and will not advance the purposes specified in K.S.A. 82a-901 et seq., and amendments thereto.

(f) If the authority finds that the proposed sale is not in the public interest or will not advance the purposes specified in K.S.A. 82a-901 et seq. and amendments thereto, the authority shall do one of the following:

(1) Reject the request to begin negotiations and advise the applicant of the reasons; or

(2) ask the applicant or the director to provide additional information that would permit the authority to find that the proposed sale is in the public interest and will advance the purposes specified in K.S.A. 82a-901 et seq., and amendments thereto.

(g) If the authority finds that the proposed sale is in the public interest and will advance the purposes specified in K.S.A. 82a-901 et seq. and amendments thereto, the authority shall authorize the director to negotiate with the applicant for the purposes of entering into a written contract for sale of water supply.

The authorization to negotiate shall be valid for a period not to exceed three years. If the parties have not concluded a contract within that period, the authority shall reconsider authorizing contract negotiations. (Authorized by K.S.A. 82a-1319; implementing K.S.A. 82a-1305 and K.S.A. 82a-1311a; effective May 1, 1979; amended May 1, 1980; amended, E-82-7, April 10, 1981; amended May 1, 1981; amended May 1, 1984; amended May 1, 1987; amended April 26, 1993; amended Aug. 30, 2013.)

98-5-4. Contract negotiation procedures. (a) Upon approval of the authority to begin negotiations, the applicant shall be notified by the

director and asked to submit the following items before the commencement of negotiations, unless the requirement is waived:

(1) The anticipated location, legal description, engineering plans, and specifications of all works, ditches, conduits, and watercourses proposed to be constructed or used for the transportation of waters;

(2) the engineering report or other evidence to support the need for the annual quantity of water requested throughout the term of the contract;

(3) a list of alternative sources of water available to the applicant;

(4) specification of whether the applicant has adopted and implemented a water conservation plan;

(5) an engineering report and specifications for metering water pumped or used under the contract;

(6) proof of any easement that is granted by the federal government for rights-of-way across, in, and upon federal government land that is required for intake, transmission of water, and necessary appurtenances;

(7) engineering plans and specifications for any pump, siphon, conduit, canal, or any other device planned to be used to withdraw water from the reservoir; and

(8) any other relevant information that the director may deem necessary, specify, or require for that specific contract request or set of negotiations.

(b) After negotiations for a water purchase contract have been authorized by the authority and if the proposed sale is not for surplus waters, all other persons with a pending application shall be notified by the director or a designee that a water purchase contract or a request to negotiate a water purchase contract relating to the same reservoir has been authorized by the authority. Notice shall be given, by first-class mail with postage prepaid, to the last address provided by each applicant. The notice shall include the name of the applicant with whom negotiations are underway and the application date, number, and annual quantity requested. Each person so notified shall, within 20 days following notification by the director, file in writing a request to begin negotiations for a written water purchase contract, water assurance contract, or water supply access contract or a request to negotiate a water purchase contract, water assurance contract, or water supply access contract

on file with the director relating to the reservoir from which water is proposed to be sold.

(c) Within 30 days after the authority authorizes negotiations, a draft water purchase contract shall be sent by the director or a designee to the applicant with whom the negotiations are authorized.

(d) When contract negotiations have been completed and a contract has been drafted, a proposed final contract shall be sent by the director to the applicant.

(e) After receipt of the proposed final contract, the applicant shall perform one of the following, within 45 days:

(1) Indicate acceptance of the contract by signing and returning it to the director or by other communication to the director;

(2) return the contract to the director with written comments;

(3) request a meeting with the director to discuss the contract; or

(4) request an extension of time for consideration of the contract.

(f) If the applicant and the director cannot agree on terms or language in the contract, the negotiations may be terminated by the director.

(g) After the applicant and the director agree to a contract, the contract shall be submitted to the authority for consideration at the next regular meeting of the authority or at a special meeting, if deemed necessary by the chairperson and the director.

(h) Before approving any contract, the authority shall find that all of the following conditions are met:

(1) The sale of water by written contract is in the interest of the people of the state of Kansas.

(2) The state has filed or will file, before initiation of water use under the contract, a water reservation right for storage of water in the reservoir designated in the contract.

(3) The state, if necessary, has signed an agreement with an agency or department of the United States for water supply storage in the named reservoir.

(4) The person has filed an application to negotiate the purchase of water from the named reservoir at an average daily rate equal to or greater than the rate specified in the contract.

(5) The quantity of water from the reservoir being negotiated does not exceed the yield capability from the conservation storage water supply capacity available to the state for use under the wa-

ter marketing program through a drought having a two percent chance of occurrence in any one year.

(6) The annual withdrawal and use of the quantity of water contracted by the applicant will advance the purposes specified in K.S.A. 82a-901 et seq., and amendments thereto.

(i) If the authority finds that the proposed sale of water is not in the interest of the people of the state of Kansas or that the proposed sale will not advance the purposes in K.S.A. 82a-901 et seq. and amendments thereto, the authority shall reject the contract and perform one of the following:

(1) Terminate the contract negotiations. The application shall be removed from the list of current applications and shall be void. The applicant shall be required to reapply for any future water supply contract; or

(2) return the contract to the applicant and director with recommendations for contract changes or additional contract negotiation.

(j) If the authority approves the contract, copies shall be provided to the house of representatives and the senate and to the secretary of state, pursuant to K.S.A. 82a-1307 and amendments thereto.

(k) The application shall be terminated when a contract is signed by the applicant, the director, and the chair, or their designees, and if the contract is not disapproved by the legislature. If the contracted quantity of water is less than the quantity stated in the application, the applicant shall not retain the application number for the remaining quantity. A new application shall be filed for additional water.

(l) If the legislature has not disapproved the contract when the period for legislative review has expired, a copy of the water purchase contract shall be filed by the director with the chief engineer.

(m) Any regulatory requirements may be waived by the director in order to sell surplus waters. (Authorized by K.S.A. 82a-1319; implementing K.S.A. 82a-1305, K.S.A. 82a-1307, K.S.A. 82a-1311a, K.S.A. 82a-1312, and K.S.A. 82a-1316; effective May 1, 1979; amended May 1, 1980; amended May 1, 1981; amended May 1, 1984; amended Aug. 30, 2013.)

98-5-5. Assignment. Each water purchase contract shall have the following provisions: (a) The purchaser shall not assign, sell, convey, or transfer all or any part of the water purchase con-

tract or interest in it, unless and until the assignment, sale, conveyance, or transfer has been approved by the director and the authority.

(b) To request permission to assign, sell, convey, or transfer all or any part of a water purchase contract, the purchaser shall provide information requested by the director to consider the request.

(c) Before approving any assignment, sale, conveyance, or transfer of all or any part of the water purchase contract, the authority shall determine that both of the following conditions are met:

(1) The contract was negotiated and signed by the parties to the contract pursuant to K.S.A. 82a-901a et seq. and K.S.A. 82a-1301 et seq., and amendments thereto.

(2) The assignment is consistent with, and will advance, the purposes specified in K.S.A. 82a-901a et seq., and amendments thereto. (Authorized by K.S.A. 82a-1319; implementing K.S.A. 82a-1306; effective May 1, 1984; amended May 1, 1987; amended April 26, 1993; amended Aug. 30, 2013.)

98-5-6. Rate charged for water. (a) The rate to be charged for water shall be fixed by the director pursuant to K.S.A. 82a-1308a, and amendments thereto. The rate fixed by the director shall be approved by the authority on or before July 15 of each calendar year. The rate shall take effect on January 1 of the following year.

(b) The fixed rate shall include amounts to cover the components required in K.S.A. 82a-1308a, and amendments thereto, and to meet the needs of the water marketing capital development and storage maintenance plan, as approved by the authority.

(c) The rate fixed for each calendar year shall apply to all water use under contracts negotiated on or after March 17, 1983.

(d) For any contract negotiated before March 17, 1983, the rate in effect on the date established by the contract for review and adjustment of the rate charged for water shall become the new rate to be charged for all water that shall be paid for under terms of the contract, up to a maximum rate not to exceed 10 cents per 1,000 gallons. The new rate shall remain in effect until the next rate established by the contract for review of the rate charged for water. (Authorized by K.S.A. 82a-1319; implementing K.S.A. 2012 Supp. 82a-1308a; effective, T-84-29, Oct. 19, 1983; effective May 1, 1984; amended May 1, 1987; amended Aug. 30, 2013.)

98-5-7. Rate charged for surplus water.

(a) No charges shall be made for surplus water if the water is for streamflow maintenance or reservoir pool management.

(b) The rate to be charged for surplus water shall be the rate set in K.S.A. 82a-1308a, and amendments thereto, and defined in K.A.R. 98-5-6. The purchaser shall be obligated to pay for at least 50 percent of the quantity specified in the contract.

(c) The rate charged for surplus water shall change on January 1 of each calendar year, when the new water rate, as described in K.A.R. 98-5-6, becomes effective. (Authorized by K.S.A. 82a-1319; implementing K.S.A. 82a-1305; effective May 1, 1984; amended May 1, 1987; amended Aug. 30, 2013.)

98-5-8. Contract provisions. (a) Each contract for the sale of water supply shall be on a form specified by the director. If the director determines, during the contract negotiation process, that any article or portion of any article in the standard contract format is not needed or is not applicable, the article or portion of it may be deleted from the standard contract by the director.

(b) Any special requirement not covered in the standard contract format may be added as an additional article in the contract. (Authorized by K.S.A. 82a-1319; implementing K.S.A. 82a-1306; effective Nov. 22, 1996; amended Aug. 30, 2013.)

98-5-9. Determination of reservoir yields through a drought with a two percent chance of occurrence in any one year. (a) The following information shall be used by the director in determining the yield of a reservoir through a drought with a two percent chance of occurrence in any one year:

(1) The reservoir analysis as part of the basin system in which the reservoir lies, using one of the following:

(A) All available climatic and hydrologic information for the period of record; or

(B) if the climatic and hydrologic information does not include the drought period of 1952 through 1957, estimation of the climatic and hydrologic information for the drought period of 1952 through 1957; and

(2) the conservation storage water supply capacities of the reservoirs in the basin system determined by capacities anticipated to be available after accounting for sedimentation in the reservoirs.

(b) The reservoir yield may be recalculated upon the office's receipt of information that could influence the yield calculations. (Authorized by K.S.A. 82a-1319; implementing K.S.A. 82a-1305; effective Aug. 30, 2013.)

Article 6.—WATER ASSURANCE PROGRAM

98-6-1. (Authorized by K.S.A. 1988 Supp. 82a-1345(e); implementing K.S.A. 1988 Supp. 82a-1330 *et seq.*; effective Sept. 4, 1989; revoked Aug. 30, 2013.)

98-6-3. Contract negotiation procedures. (a) Any water assurance district may request, in writing, to negotiate with the director for a water assurance contract. The request shall be submitted on forms provided by the office and include all information requested on those forms. Each request shall include a copy of the district's certificate of incorporation filed with the secretary of state.

(b) The request to negotiate and the information provided by the water assurance district shall be reviewed by the director to determine if the information provided is sufficient to begin negotiations for a water assurance contract. The district shall be notified by the director if there is a need for additional information or if the request submitted is sufficient to begin negotiations. The notice shall be in writing and shall be provided within 30 days of receipt of the request.

(c) If the director finds that the information provided by the assurance district is sufficient, the negotiations shall commence.

(d) Each person who has a water purchase contract or an application for a water purchase contract on file with the director, or a water assurance contract pertaining to storage in reservoirs in the designated basin, shall be notified in writing that negotiations with an assurance district have begun. The notice shall be mailed to each person's last known address. Each person so notified shall, within 20 days following notification by the director, file in writing a request to begin negotiations for a written contract, or forfeit the right to participate in current negotiations for a written contract for water purchase or for a water assurance contract.

(e) Water assurance contract negotiations shall be conducted by the director and the board members of the assurance district or their designees.

(f) If the district and the director cannot agree

on terms or language in the contract, the negotiations may be terminated by either party.

(g) A water assurance contract shall be approved by the director if the director finds that all of the following conditions are met:

(1) The approval of the water assurance contract is in the best interest of the people of the state of Kansas.

(2) The water assurance contract refers to and incorporates by reference an operations agreement that includes the following:

(A) The rules of operation for designated assurance reservoirs to provide assurance water;

(B) quantities of water supply in designated assurance reservoirs;

(C) the quantities of water supply use by eligible members of the water assurance district;

(D) a provision that establishes procedures for allocating inflows in any reservoir in which a water assurance district has purchased storage;

(E) target flows along designated rivers;

(F) a provision to release water from storage from one or more reservoirs in order to meet specified instream purposes; and

(G) any other related matters to which the parties agree.

(3) The state has filed or will file, if necessary, before initiation of the operations agreement, a water reservation right for storage of water in the reservoirs designated in the contract.

(4) The state has signed or will sign, if necessary, an agreement with an agency or department of the United States for water supply storage space in reservoirs named in the operations agreement.

(5) The water assurance contract includes a statement that the water assurance storage component of the major reservoirs in the designated basin are designated for the sole use and benefit of the water assurance district in accordance with the operations agreement.

(6) The remaining water supply capacity satisfies any present water purchase contract.

(7) Before any member of the water assurance district receives benefits or water pursuant to a water assurance contract, that member has adopted a water conservation plan consistent with the guidelines for conservation plans and practices developed and maintained by the Kansas water office pursuant to K.S.A. 74-2608, and amendments thereto.

(8) The water assurance contract contains a provision that establishes procedures for allocating

inflows in any reservoir in which a water assurance district has purchased storage.

(h) Upon completion of negotiations, a proposed final water assurance contract shall be sent by the director to the water assurance district.

(i) After receipt of the proposed final water assurance contract, the water assurance district shall perform one of the following, within 45 days:

(1) Indicate acceptance of the water assurance contract by signing and returning it to the director;

(2) return the unsigned water assurance contract to the director with written comments;

(3) request a meeting with the director to discuss the water assurance contract; or

(4) request an extension of time for consideration of the water assurance contract.

(j) Upon final agreement and signing of a water assurance contract by the president and chairperson of the district board of directors, an original of the water assurance contract shall be filed with the following persons:

(1) The director;

(2) the president of the contracting water assurance district board of directors;

(3) the chief engineer, division of water resources in the Kansas department of agriculture;

(4) the Kansas secretary of state; and

(5) the district engineer of the U.S. army corps of engineers or the regional director of the bureau of reclamation. (Authorized by K.S.A. 82a-1345; implementing K.S.A. 82a-1345 and 82a-1347; effective Sept. 4, 1989; amended Aug. 30, 2013.)

98-6-4. Calculation of charges. The charges to be paid by the district shall be determined by the director as provided in K.S.A. 82a-1345 and amendments thereto, which shall include the following:

(a) The amount necessary to cover the amortized capital costs to the state for acquisitions of assurance storage capacity from the federal government necessary to meet the requirements of the operations agreement. The amortized capital costs to the state shall be determined on an individual reservoir basis for reservoirs in the designated basin in which the assurance district is formed as follows:

(1) One lump sum, up-front payment for principal and interest paid, or due to be paid, including any interest which has accumulated through the date of commencement of operations of storage space under the operations agreement;

(2) annual principal and interest payments on revenue bonds issued by the state pursuant to K.S.A. 82a-1360 et seq. and amendments thereto;

(3) annual principal and interest payments on revenue bonds issued under authority of the Kansas development finance authority;

(4) equal annual installments for a period not to exceed 10 years for any equity that the state may already have in conservation water supply storage capacity with interest based on a five-year average of the published one-year investment rate for public funds of the pooled money investment board of the state of Kansas, as provided in K.S.A. 12-1675a(g) and amendments thereto, to be adjusted by the office on January 15 of each calendar year of the installment agreement; and

(5) equal annual installments for future use conservation water supply storage capacity called into service by the state under contracts with the army corps of engineers, under the same cost repayment conditions available to the state under those contracts;

(b) the amount necessary to cover 100% of the annual cost to the state for the actual operation, maintenance, major replacement, and rehabilitation costs allocated to the assurance storage capacity necessary to meet the requirements of the operations agreement;

(c) the amount necessary to cover the annual costs to the state for administration and enforcement of laws and agreements associated with ensuring the continuous operations of the water assurance district; and

(d) any additional charges agreed upon by both parties. (Authorized by and implementing K.S.A. 82a-1345; effective Sept. 4, 1989; amended Aug. 30, 2013.)

Article 7.—LOWER SMOKY HILL WATER SUPPLY ACCESS PROGRAM

98-7-1. District formation. (a) The application for membership to form the district shall include the following:

(1) The name and signature of each person interested in membership in the district when the application is submitted and an address to receive communication from the director;

(2) the name of one person to answer questions and receive notices from the director;

(3) the quantity of access water that each person desires to purchase if a district is formed;

(4) water right information for each person to be included as part of the district; and

(5) any other information that the applicants can provide to assist in consideration of the petition.

(b) Upon the director's receipt of an application for membership to form the district, the application shall be reviewed. Within 15 business days of the director's receipt of the application, a determination that additional information is needed may be made by the director. A letter outlining the request for additional information shall be sent to the person indicated in the petition. The applicants shall provide the additional information within 15 business days of the date of the request.

(c) The application shall be considered by the director to determine if there is a need to form the district and provide certification of district formation or if the district should be refused formation and certification. The director's determination shall be made no more than 60 days following receipt of the application or, if requested, receipt of any additional information requested.

(d) Notice of the organizational meeting shall be mailed to all persons signing the application.

(e) A copy of all application documents shall be provided by the office to the chief engineer.

(f) The organization meeting shall be presided over by the director until the incorporating chairperson is selected. (Authorized by K.S.A. 2012 Supp. 82a-2324; implementing K.S.A. 2012 Supp. 82a-2304, K.S.A. 2012 Supp. 82a-2305; effective Aug. 30, 2013.)

98-7-2. District membership after district formation. (a) All persons included in the application to form the district shall become members of the district, without additional application as may be required by this regulation, if these persons are deemed eligible for membership by the director upon forming the district as provided in K.A.R. 98-7-1.

(b) After the district has been formed, each person seeking to join the district shall submit an application for membership, on forms provided by the office, to the director. Each applicant shall submit sufficient information for the director to consider whether the proposed membership in the district meets the requirements of K.S.A. 82a-2305b, and amendments thereto. Additional information may be requested by the director from the prospective member, as needed, to consider

the application. Notice of the application for membership shall be given to the district by the director, which shall provide for no more than 30 business days for a response from the district about the application for membership. A determination of membership shall be made by the director no more than 180 days from the receipt of the application for membership. (Authorized by K.S.A. 2012 Supp. 82a-2324; implementing K.S.A. 2012 Supp. 82a-2305; effective Aug. 30, 2013.)

98-7-3. Special irrigation district; organization. (a) The petition to form the special irrigation district shall include the following:

(1) The name of each person seeking membership in the special irrigation district when the petition is submitted and an address to receive communication from the director;

(2) the name of the petitioner's designee to answer questions and receive notices from the director;

(3) the quantity of access water that each petitioner seeks to purchase if the special irrigation district is formed;

(4) water right information for each petitioner to be included as part of the special irrigation district for the purposes of the act;

(5) land ownership information sufficient to verify each petitioner's eligibility for membership in the special irrigation district; and

(6) any other information that any petitioner can provide to assist the director in consideration of the petition.

(b) Upon the director's receipt of the petition to form the special irrigation district, the petition shall be reviewed. Within 15 business days of the director's receipt of the petition to form the special irrigation district, a determination that additional information is needed may be made. A letter outlining the additional information that the director needs to consider the petition shall be sent to the petitioner's designee. Additional information shall be provided within 15 business days of the date of the request.

(c) Notice of the organizational meeting shall be published in the Kansas register and shall be mailed to all petitioners.

(d) A copy of all petition documents shall be provided by the office to the chief engineer.

(e) The organizational meeting shall be presided over by the director until the governing board is selected. (Authorized by K.S.A. 2012

Supp. 82a-2324; implementing K.S.A. 2012 Supp. 82a-2317; effective Aug. 30, 2013.)

98-7-4. Contract negotiation procedures. (a) The water supply access district's governing body may request, in writing, to negotiate with the director for water supply access storage contracts. The request shall be submitted on forms provided by the office and shall include any information requested on those forms. Each request shall include a copy of the water supply access district's certificate of incorporation filed with the secretary of state.

(b) The request to negotiate and the information provided by the water supply access district shall be reviewed by the director. A determination of whether the information provided is sufficient to begin negotiations for a water supply access storage contract shall be made by the director within 30 days of receipt of the request. The water supply access district shall be notified by the director, in writing, if there is a need for additional information or if the request submitted is sufficient to begin negotiations, within 40 days of receipt of the request.

(c) If the director finds that the information provided by the water supply access district is sufficient, and upon approval by the Kansas water authority, negotiations shall commence.

(d) Each person who has a water supply purchase contract or an application for a water supply purchase contract on file with the director shall be notified in writing that negotiations with a water supply access district have been approved. The notice shall be mailed to each person's last known address. Each person so notified, within 20 days following notification by the director, shall file in writing a request to begin negotiations for a written contract or shall forfeit that person's right to participate in the current negotiations for a written contract for a water supply contract or for a water access contract.

(e) Water supply access storage contract negotiations shall be conducted by the director and the board members of the water supply access district.

(f) If the water supply access district and the director cannot agree on terms of a contract, the negotiations may be terminated by either party.

(g) A water supply access contract shall be approved by the director if the director finds that all the following conditions are met:

(1) The approval of the water supply access con-

tract is in the best interest of the people of the state of Kansas.

(2) The water supply access contract refers to and incorporates by reference an operations agreement that includes the following:

(A) The rules of operation for Kanopolis reservoir to provide access water supply to the district;

(B) the quantity of water supply access storage in Kanopolis reservoir;

(C) the quantities of water supply access storage used by members of the water access district;

(D) a provision that establishes procedures for allocating inflows in Kanopolis reservoir;

(E) target flows along designated rivers;

(F) a provision to release water from storage from Kanopolis reservoir in order to meet specified in-stream purposes; and

(G) any other related matters to which the parties agree.

(3) The state has filed or will file, if necessary, before initiation of the operations agreement, a water reservation right for storage of water in Kanopolis reservoir.

(4) The state has signed or will sign, if necessary, an agreement with an agency or department of the United States for water supply storage space in the access reservoir named in the operations agreement.

(5) The water supply access contract includes a statement that the water access storage component of Kanopolis reservoir is designated for the sole use and benefit of the water supply access district in accordance with the operations agreement.

(6) The remaining water supply capacity satisfies the terms of any existing water purchase contracts.

(7) Before any member of the water supply access district receives benefits or water pursuant to a water supply access contract, that member has adopted a water conservation plan consistent with the guidelines for conservation plans and practices developed and maintained by the Kansas water office pursuant to K.S.A. 74-2608, and amendments thereto.

(h) Upon completion of negotiations, a proposed water supply access contract shall be sent by the director to the water supply access district.

(i) After receipt of the proposed water supply access contract, the water supply access district's governing body shall perform one of the following within 45 days:

(1) Indicate acceptance of the water supply access contract by signing and returning it to the director;

(2) return the unsigned water supply access contract to the director with written comments;

(3) request a meeting with the director to discuss the water supply access contract; or

(4) request an extension of time for consideration of the water supply access contract.

(j) Upon the final agreement and signing of a water supply access contract by the water supply access district's governing body, a copy of the water supply access contract shall be filed with the following persons:

(1) The director;

(2) the governing body of the water supply access district;

(3) the chief engineer, division of water resources in the Kansas department of agriculture;

(4) the Kansas secretary of state; and

(5) the district engineer of the United States army corps of engineers. (Authorized by K.S.A. 2012 Supp. 82a-2324; implementing K.S.A. 2012 Supp. 82a-2302; effective Aug. 30, 2013.)

98-7-6. Calculation of charges by water supply access district. The charges to be paid by the lower smoky hill water supply access district shall be determined by the director pursuant to K.S.A. 2012 Supp. 82a-2310 and amendments thereto, which shall include the following:

(a) The amount necessary to cover the amortized capital costs to the state for acquisitions of access storage capacity from the federal government necessary to meet the requirements of the operations agreement. The amortized capital costs to the state shall be determined for Kanopolis reservoir as follows:

(1) One lump sum, up-front payment for principal and interest paid, or due to be paid, including any interest that has accumulated through the date of commencement of operations of storage space under the operations agreement;

(2) annual principal and interest payments on revenue bonds issued by the state pursuant to K.S.A. 2012 Supp. 82a-2314 and amendments thereto;

(3) annual principal and interest payments on revenue bonds issued under authority of the Kansas development finance authority; or

(4) equal annual installments for a period not to exceed 20 years for any equity that the state may already have in conservation water supply

storage capacity with interest based on a five-year average of the published one-year investment rate for public funds of the pooled money investment board of the state of Kansas, pursuant to K.S.A. 12-1675a and amendments thereto, to be adjusted by the office on January 15 of each calendar year of the installment agreement;

(b) the amount necessary to cover 100 percent of the annual cost to the state for the actual operation, maintenance, and major replacement and rehabilitation costs allocated to the access storage capacity necessary to meet the requirements of the operations agreement;

(c) the amount necessary to cover the annual costs to the state for administration and enforcement of laws and agreements associated with assuring the continuous operations of the water access district; and

(d) any additional charges agreed upon by both parties. (Authorized by and implementing K.S.A. 2012 Supp. 82a-2324; effective Aug. 30, 2013.)

Article 8.—EASEMENT AUTHORITY ON NAVIGABLE RIVERS

98-8-1. Application for easement. (a) Any cooperating landowner may submit an application for an easement on state property along a navigable river on forms provided by the director. The cooperating landowner shall acknowledge that the cooperating landowner will pay all applicable filing fees for any easement granted.

(b) The following shall be confirmed by the director:

(1)(A) The cooperating landowner owns the property adjacent to the state property upon which an easement is proposed; or

(B) the cooperating landowner otherwise has a legal right to complete a project on the adjacent land.

(2) The cooperating landowner is participating in a state, local, or federal program, if applicable.

(c) A notice of intent to issue easement shall be issued by the director for each project that meets the requirements of subsection (b). The notice of intent to issue easement shall include the following:

(1) The legal description of the cooperating landowner's property;

(2) information about the location on the river upon which the easement is proposed;

(3) a description of the type of projects pro-

posed to be completed by and through the use of the easement; and

(4) a date and time by which any comments or responses to the director about the notice of intent to issue easement must be received by reviewing agencies and entities.

(d) A determination of whether any prior easement in the county or counties in which the project is proposed could conflict with the proposed easement shall be made by the director. The notice of the intent to issue easement shall be sent by the director to each person holding any prior easements that could conflict.

(e) The notice of intent to issue easement shall provide a comment period of at least 15 days and no more than 30 days. During that time, any person receiving notice may submit comments on the proposed easement to the director. The notice shall provide information on how to submit comments to the director.

(f) The notice of intent to issue easement may be sent by any means that the director specifies. (Authorized by and implementing K.S.A. 2011 Supp. 82a-220; effective Aug. 30, 2013.)

98-8-2. Notice to county and other government agencies. A copy of the notice of intent to grant easement shall be sent by the director to the following: (a) The register of deeds and the county commission in each county in which the easement is proposed;

(b) the program agencies;

(c) the Kansas department of agriculture;

(d) the Kansas department of health and environment;

(e) the Kansas department of wildlife, parks, and tourism; and

(f) any municipality or other governmental entity holding a riparian interest in the applicable river that the director determines should receive notice. (Authorized by and implementing K.S.A. 2011 Supp. 82a-220, as amended by L. 2012, ch. 140, sec. 133; effective Aug. 30, 2013.)

98-8-3. Review of notice of intent to grant easement. (a) After the comment period specified in the notice of intent to grant easement has ended, the application, any comments or responses received, and the proposed project shall be reviewed by the director.

(b) No easement shall be granted until applicable program funding for the project has preliminary approval, if the project depends on a federal, state, or local program for funding.

(c) If, after review, the director determines that the application meets the statutory requirements for an easement in K.S.A. 82a-220 and amendments thereto, notice of the approval shall be sent to the cooperating landowner and the fees necessary for filing the easement shall be collected by the director.

(d) If, after review, the director determines that the application does not meet the statutory requirements for an easement or that the comments and responses received from those receiving the notice of intent to grant easement raise questions or issues that need to be resolved before an easement should be granted, a notice of cancellation of the intent to grant easement that provides the cooperating landowner with information about the concerns raised or problems to be addressed shall be issued by the director. The notice of cancellation shall indicate that the notice of intent to grant easement will be cancelled on a date

certain, but not less than 15 business days after the date of the notice to cancel. The notice of cancellation shall be sent to all entities that received the notice of intent to grant easement.

(e) The cooperating landowner may, before the date indicated in the notice of cancellation, provide additional information or data or address concerns. If the director determines that the additional information provided adequately addresses concerns noted in the notice of cancellation, the easement may be granted after the director provides a summary of the information to all receiving notice under this regulation. An easement may be granted by the director if no person receiving notice files an objection within 10 days. Each objection shall be reviewed by the director to determine if the objection would change the director's intent to grant the easement. (Authorized by and implementing K.S.A. 2011 Supp. 82a-220, as amended by L. 2012, ch. 140, sec. 133; effective Aug. 30, 2013.)